


**FILED**

**MAR 09 2010**

  
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

JERRY ROACH,	)	CIV. 09-4184-RHB
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
BOB DOOLEY, Warden, Mike Durfee	)	
State Prison; and CLASSIFICATION	)	
STAFF, in their individual and official	)	
capacities,	)	
	)	
Defendants.	)	

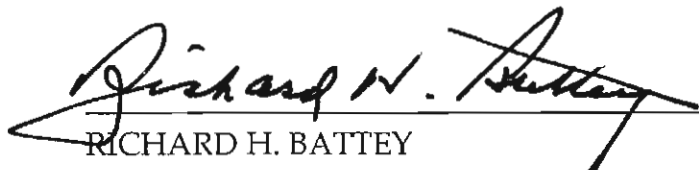
Plaintiff commenced this action on December 14, 2009, alleging that defendants violated his constitutional rights. The Court, pursuant to 28 U.S.C. §§ 1915 and 1915A, screened the complaint and determined that plaintiff failed to state a claim upon which relief may be granted. The action was accordingly dismissed on December 30, 2009. Plaintiff filed a notice of appeal on January 8, 2010. Plaintiff now moves for a certificate of appealability.

A certificate of appealability is only required in habeas corpus actions and is not necessary in a prisoner civil rights action. See 28 U.S.C. § 2253. Furthermore, plaintiff filed a notice of appeal and the matter is currently pending before the Eighth Circuit Court of Appeals. Accordingly, it is hereby

ORDERED that plaintiff's motion for a certificate of appealability (Docket #25)  
is dismissed as moot.

Dated this 7<sup>th</sup> day of March, 2010.

BY THE COURT:

  
RICHARD H. BATTEY  
UNITED STATES DISTRICT JUDGE